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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,591	12/11/2001	Masato Saito	016912-0202	1776

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EXAMINER
WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
1617	7

DATE MAILED: 09/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/009,591	Applicant(s) SAITO ET AL.	
	Examiner Lauren Q Wells	Art Unit 1617	

-- The MAILING DATE of this communication appears n the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 June 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) *8,11,14,17-20,23,26 and 29* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,9,10,12,13,15,16,21,22,24,25,27 and 28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *1* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claims 1-29 are pending. Claims 8, 11, 14, 17-20, 23, 26 and 29 are withdrawn from consideration, as they are directed to non-elected subject matter. The Amendment filed 12/11/01, Paper No. 4, amended the title, amended pages 6-7 of the specification, amended claims 3-5, and added claims 6-29. The Amendment filed 6/20/03, Paper, No. 6, amended claims 1-19.

Election/Restrictions

Applicant's election without traverse of the Election of Species in Paper No. 6 is acknowledged.

The Examiner searched "one or more compounds" (i.e., component "(b)") in its entirety, thereby withdrawing the election of species requirement for this element.

Thus, claims 1-7, 9-10, 12-13, 15-16, 21-22, 24-25, and 27-28, were examined to the extent described in the previous paragraph and the Election of Species in Paper No. 6. Claims 8, 11, 14, 17-20, 23, 26 and 29 are withdrawn from consideration, as they are directed to non-elected subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4, 7, 10, 22, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. (EP 0 897 719) in view of Takamura et al. (5,035,832).

The instant invention is directed toward a composition comprising a polyoxyalkylene-modified organopolysiloxane having 2 or 3 alkylene carbon atoms, and at least one compound selected from polyhydric alcohols and polyoxyalkylene-glycol adducts having 2 or 3 alkylene carbon atoms; one or more compounds selected from silicic acid anhydride, silicic acid hydrate, synthetic hydrotalcite, and synthetic calcined hydrotalcite; and a thickening agent; and which is substantially non-aqueous.

Franklin et al. teach a topical cleansing composition. Exemplified is a composition comprising 37% zeolite, 1% kaolin (thickening agent), 20.5% PEG-400 (polyhydric alcohol), and other ingredients. Silica or activated hydrotalcite is added to the composition as a heat generating material that can be combined with zeolite, wherein the heat generating material is taught as comprising 10-50% of the composition. The composition can have a viscosity of 150,000 cp as measured on a Brookfield viscometer. Shampoos are taught as preferred forms of the composition. The compositions are substantially non-aqueous. The reference lacks polyoxyalkylene-modified organopolysiloxane. See [0010]-[0025]; [0046]-[0049]; [0055].

Takamura et al. teach detergent compositions. Polyether-modified silicones are taught as ingredients that impart a soft finish, superior tensity to the hair, and superb light feeling to the skin when added to cosmetic compositions. See Col. 4, lines 29-59; Col. 5, lines 47-65.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the polyether-modified silicones taught by Takamura et al. to the shampoo compositions of Franklin et al. because of the expectation of achieving a shampoo that imparts a soft finish upon use, that imparts superior tensity to the hair, and that gives a superb light feeling to the skin.

Claims 6, 9, 21 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. (EP 0 897 719) in view of Takamura et al. (5,035,832), and further in view of Maejima et al. (5,695,730).

The instant invention is directed toward a composition comprising a polyoxyalkylene-modified organopolysiloxane having 2 or 3 alkylene carbon atoms, and at least one compound selected from polyhydric alcohols and polyoxyalkylene-glycol adducts having 2 or 3 alkylene carbon atoms; one or more compounds selected from silicic acid anhydride, silicic acid hydrate, synthetic hydrotalcite, and synthetic calcined hydrotalcite; and a thickening agent; and which is substantially non-aqueous.

Franklin et al. teach a topical cleansing composition. Exemplified is a composition comprising 37% zeolite, 1% kaolin (thickening agent), 20.5% PEG-400 (polyhydric alcohol), and other ingredients. Silica or activated hydrotalcite is added to the composition as a heat generating material that can be combined with zeolite, wherein the heat generating material is taught as comprising 10-50% of the composition. The composition can have a viscosity of 150,000 cp s measured on a Brookfield viscometer. Shampoos are taught as preferred forms of the composition. The compositions are substantially non-aqueous. The reference lacks polyoxyalkylene-modified organopolysiloxane and silicic acid. See [0010]-[0025]; [0046]-[0049]; [0055].

Takamura et al. teach detergent compositions. Polyether-modified silicones are taught as ingredients that impart a soft finish, superior tensity to the hair, and superb light feeling to the skin when added to cosmetic compositions. See Col. 4, lines 29-59; Col. 5, lines 47-65.

Maejima et al. teach a process for preparing silicic acid hydrate. Silic acid hydrate is taught as a filler or a flatting agent for cosmetics. See abstract; Col. 7, lines 47-52.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the polyether-modified silicones taught by Takamura et al. to the shampoo compositions of Franklin et al. because of the expectation of achieving a shampoo that imparts a soft finish upon use, that imparts superior tensity to the hair, and that gives a superb light feeling to the skin.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add silicic acid hydrate, as taught by Maejima et al., to the composition of the combined references because the combined references teach the addition of silica to their compositions as an additional heat generating material and as stabilizing their composition, and silicic acid hydrate is a silica that Maejima et al. teaches as cosmetically acceptable; and because of the expectation of achieving a cosmetic product with body and uniformity, and which imparts a matte effect and softness to the user, which is the function of a cosmetic filler.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. in view of Takamura et al. as applied to claims 1-4, 7, 10, 22, and 28 above, and further in view of Coury et al. (6,261,544).

Franklin et al. and Takamura et al. are applied as discussed above. The references lack sodium polyacrylate powder.

Coury et al. teach cosmetic compositions, wherein sodium polyacrylate powders are taught as fillers. Additives, such as fillers, are taught as comprising up to 10% of the

composition. Fillers impart body or rigidity to compositions, and/or softness, a matte effect and uniformity to a composition. See Col. 14, lines 45-52.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the sodium polyacrylate powders taught by Coury et al. to the composition of the combined references because of the expectation of achieving a cosmetic product with body and uniformity and which imparts a matte effect and softness to the user.

Claims 13, 16 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. in view of Takamura et al. and further in view of Coury et al. as applied to claims 1-5, 7, 10, 22, and 28 above, and further in view of Macchio et al. (5,023,075).

Franklin et al., Takamura et al., and Coury et al. are applied as discussed above. The references fail to teach the size of the powder.

Macchio et al. teach polyacrylate powders as comprising 1-10% of a cosmetic composition and as having an average particle size of 10 microns as non-pore clogging and ultra-smooth upon application. See abstract; Col. 1, lines 14-57.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the sodium polyacrylate powder of the combined references as having an average particle size of 10 microns because of the expectation of achieving a product wherein the powder does not clog pores and which is smooth upon application.

While the references do not explicitly teach the powder comprising 0.05-2%, it would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the powder as comprising 0.05-2% of the composition because Coury et al. teach their additives as comprising less than 10% of the composition and it has been held that where the general

conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claims 12, 15, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. in view of Takamura et al. in further view of Maejima et al. as applied to claims 6, 9, 21 and 27 above, and further in view of Coury et al. (6,261,544) and Macchio et al. (5,023,075).

Franklin et al., Takamura et al., and Maejima et al. are applied as discussed above. The reference lacks sodium polyacrylate powder.

Coury et al. teach cosmetic compositions, wherein sodium polyacrylate powders are taught as fillers. Additives, such as fillers, are taught as comprising up to 10% of the composition. Fillers impart body or rigidity to compositions, and/or softness, a matte effect and uniformity to a composition. See Col. 14, lines 45-52.

Macchio et al. teach polyacrylate powders as comprising 1-10% of a cosmetic composition and as having an average particle size of 10 microns as non-pore clogging and ultra-smooth upon application. See abstract; Col. 1, lines 14-57.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the sodium polyacrylate powders taught by Coury et al. to the composition of the combined references because of the expectation of achieving a cosmetic product with body and uniformity and which imparts a matte effect and softness to the user.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the sodium polyacrylate powder of the combined references as having an

average particle size of 10 microns because of the expectation of achieving a product wherein the powder does not clog pores and which is smooth upon application.

While the references do not explicitly teach the powder comprising 0.05-2%, it would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the powder as comprising 0.05-2% of the composition because Coury et al. teach their additives as comprising less than 10% of the composition and it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-4:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw
August 5, 2003

SREENI PADMANABHAN
PRIMARY EXAMINER

8/5/03